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(b) If any person shall in any written response to Commission correspondence or inquiry or in any application, pleading, report, or any other written statement submitted to the Commission pursuant to this subpart make any misrepresentation bearing on any matter within the jurisdiction of the Commission, the Commission may, in addition to any other remedies, including criminal penalties under section 1001 of Title 18 of the United States Code, impose a forfeiture pursuant to section 503(b) of the Communications Act, 47 U.S.C. 503(b).

§ 1.1414 State certification.

(a) If the Commission does not receive certification from a state that:

(1) It regulates rates, terms and conditions for pole attachments;

(2) In so regulating such rates, terms and conditions, the state has the authority to consider and does consider the interests of the subscribers of cable television services as well as the interests of the consumers of the utility services; and,

(3) It has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific methodology for such regulation which has been made publicly available in the state), it will be rebuttably presumed that the state is not regulating pole attachments.

(b) Upon receipt of such certification, the Commission shall give public notice. In addition, the Commission shall compile and publish from time to time, a listing of states which have provided certification.

(c) Upon receipt of such certification, the Commission shall forward any pending case thereby affected to the state regulatory authority, shall so notify the parties involved and shall give public notice thereof.

(d) Certification shall be by order of the state regulatory body or by a person having lawful delegated authority under provisions of state law to submit such certification. Said person shall provide in writing a statement that he or she has such authority and shall cite the law, regulation or other instrument conferring such authority.

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(e) Notwithstanding any such certification, jurisdiction will revert to this Commission with respect to any individual matter, unless the state takes final action on a complaint regarding such matter:

(1) Within 180 days after the complaint is filed with the state, or

(2) Within the applicable periods prescribed for such final action in such rules and regulations of the state, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

[43 FR 36094, Aug. 15, 1978, as amended at 44 FR 31650, June 1, 1979; 50 FR 18659, May 5, 1985]

§ 1.1415 Other orders.

The Commission may issue such other orders and so conduct its proceedings as will best conduce to the proper dispatch of business and the ends of justice.

§ 1.1416 Imputation of rates; modification costs.

(a) A utility that engages in the provision of telecommunications services or cable services shall impute to its costs of providing such services (and charge any affiliate, subsidiary, or associate company engaged in the provision of such services) an equal amount to the pole attachment rate for which such company would be liable under this section.

(b) The costs of modifying a facility shall be borne by all parties that obtain access to the facility as a result of the modification and by all parties that directly benefit from the modification. Each party described in the preceding sentence shall share proportionately in the cost of the modification. A party with a preexisting attachment to the modified facility shall be deemed to directly benefit from a modification if, after receiving notification of such modification as provided in subpart J of this part, it adds to or modifies its attachment. Notwithstanding the foregoing, a party with a preexisting attachment to a pole, conduit, duct or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment if such rearrangement or replacement is necessitated solely as a result of an

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additional attachment or the modification of an existing attachment sought by another party. If a party makes an attachment to the facility after the completion of the modification, such party shall share proportionately in the cost of the modification if such modification rendered possible the added attachment.

[61 FR 43025, Aug. 20, 1996; 61 FR 45619, Aug. 29, 1996]

§ 1.1417 Allocation of Unusable Space Costs.

(a) A utility shall apportion the cost of providing unusable space on a pole,

$$\text{Pole Unusable Space Factor} = \frac{2}{3} \times \frac{\text{Unusable Space}}{\text{Pole Height}} \times \frac{\text{Net Cost of Bare Pole}}{\text{Number of Attachers}} \times \text{Carrying Charge Rate}$$

All attaching entities shall be counted as separate attaching entities for purposes of apportioning the costs of unusable space.

(c) With respect to conduit, the following formula shall be used to estab-

duct, conduit, or right-of-way so that such apportionment equals two-thirds of the costs of providing unusable space that would be allocated to such entity under an equal apportionment of such costs among all entities.

(b) With respect to poles, the following formula shall be used to establish the allocation of unusable space costs on a pole for telecommunications carriers and cable operators providing telecommunications services:

lish the allocation of unusable space costs for telecommunications carriers and cable operators providing telecommunications services within a conduit:

$$\text{Conduit Unusable Space Factor} = \frac{2}{3} \times \frac{\text{Net Linear Cost of Unusable Conduit Space}}{\text{Number of Attachers}} \times \text{Carrying Charge Rate}$$

All attaching entities with lines occupying any portion of a conduit system shall be counted as separate attaching entities for purposes of apportioning the costs of unusable space.

(d) Each utility shall establish a presumptive average number of attachers for each of its rural, urban, and urbanized service areas (as defined by the Bureau of Census of the Department of Commerce).

(1) Each utility shall, upon request, provide all attaching entities and all entities seeking access the methodology and information upon which the utilities presumptive average number of attachers is based.

(2) Each utility is required to exercise good faith in establishing and up-

dating its presumptive average number of attachers.

(3) The presumptive average number of attachers may be challenged by an attaching entity by submitting information demonstrating why the utility's presumptive average is incorrect. The attaching entity should also submit what it believes should be the presumptive average and the methodology used. Where a complete inspection is impractical, a statistically sound survey may be submitted.

(4) Upon successful challenge of the existing presumptive average number of attachers, the resulting data determined shall be used by the utility as